

### **REMARKS**

As a preliminary matter, the undersigned thanks Examiner Frazier for discussing the pending application on December 14, 2009. The amendments to the claims and declaration mentioned during that phone call have been made herein.

#### **Status of the Application**

Claims 46 and 48-52 are pending. Claims 43-45 have been cancelled solely to expedite prosecution of the pending application and without prejudice or disclaimer to the cancelled subject matter. Applicants expressly reserve the right to file one or more continuing applications directed to the cancelled subject matter. Claim 46 has been amended. Claim 22 was previously withdrawn from consideration, but has been amended to recite the compounds in now pending Claim 46. Support for the amendments can be found throughout the specification and claims as filed. No new matter has been added. Applicants respectfully request allowance of the amended claims.

#### **Rejection under 35 U.S.C. § 102(e) - Simoneau**

Claims 43-46 and 48-51 now stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Simoneau *et al* (US 2005/0054639). This rejection was first made by the Examiner in the Final Office Action. Therefore, Applicants respectfully request withdrawal of the finality of the rejection or allowance of the pending claims. Moreover, without conceding to the appropriateness of this rejection, Applicants respectfully request withdrawal of this rejection based on the declaration of Dr. Jean-Luc Girardet, submitted herewith. With this declaration, Applicants have provided evidence that they conceived of the invention before the effective date of the cited reference and that they were diligent in reducing the claimed invention to practice.

#### **Double Patenting**

Claims 43-46 and 48-51 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 55 and 83 of copending Application No. 11/661,079 and claims 55 and 83 of copending Application No. 12/114,467. Without conceding to the appropriateness of these rejections, Applicant will consider submitting a terminal disclaimer once allowable subject matter is indicated.

**CONCLUSION**

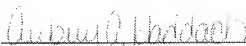
Applicants submit that this response fully addresses the Final Office Action mailed October 15, 2009 and that for the reasons set forth herein, the pending claims are in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (858) 350-2319.

Respectfully submitted,

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Date: December 15, 2009

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